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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL NEELY,

11 Plaintiff,

Case No. 16-01791-RAJ

12 v.

13 THE BOEING COMPANY,

Defendant.

ORDER

14 This comes before the Court on Plaintiff's Motion to Compel¹. Dkt. # 71.
15 Defendant opposes the Motion. Dkt. # 74.

16 **I. BACKGROUND**

17 Plaintiff filed his original Complaint in the Central District of California on July
18 7, 2016. Dkt. # 1. Plaintiff filed a First Amended Complaint on September 15, 2016.
19 Plaintiff's case was transferred to this Court on November 18, 2016. Dkt. ## 17, 25.
20 On September 20, 2017, Plaintiff filed a Second Amended Complaint. Dkt. # 57. On or
21 about August 29, 2017, Plaintiff served Defendant with his first set of written discovery
22 requests. Dkt. # 71 Ex. 1 at 3. After Defendant served its responses to Plaintiff's
23 discovery requests, the parties met and conferred regarding these responses on two
24 occasions in October of 2017. *Id.*; Dkt. # 75. The parties were unable to come to an
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26 ¹ Plaintiff's Motion to Compel is twenty-four (24) pages. This exceeds the page limit
27 set forth in Local Rule 7(e) by 12 pages. Plaintiff's Motion is double the page limit allowed for
motions to compel. The parties are reminded to follow all local rules and are cautioned that
future deviations may result in the Court striking any motion that is not in compliance.

1 agreement on their discovery disputes at the conclusion of these conferences and did not
2 meet again. *Id.* On November 9, 2017, Defendant supplemented its discovery
3 responses. *Id.* Shortly after, the parties exchanged communications regarding
4 Defendant's supplemental response. Specifically, Plaintiff requested that Defendant
5 supplement its production Plaintiff's Request for Production No. 6, which requests "all
6 Plaintiff's written and electronic complete personnel file." *Id.* Defendant responded
7 that it had produced Plaintiff's complete personnel file. On December 13, 2017,
8 Defendant supplemented its discovery responses again. *Id.*

9 **II. DISCUSSION**

10 The Court has broad discretion to control discovery. *Avila v. Willits Env'tl.*
11 *Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011). That discretion is guided by
12 several principles. Most importantly, the scope of discovery is broad. A party must
13 respond to any relevant discovery request that is not privileged and that is "reasonably
14 calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).
15 The Court, however, must limit discovery where it can be obtained from some other
16 source that is more convenient, less burdensome, or less expensive, or where its "burden
17 or expense . . . outweighs its likely benefit, considering the needs of the case, the
18 amount in controversy, the parties' resources, the importance of the issues at stake in the
19 action, and the importance of the discovery in resolving these issues." Fed. R. Civ. P.
20 26(b)(2)(C)(i), (iii).

21 Defendant argues that Plaintiff failed to comply with the meet-and-confer
22 requirements of Federal Rule of Civil Procedure 37(a)(1) and LCR 37(a)(1). The
23 former provides, "[t]he motion must include a certification that the movant has in good
24 faith conferred or attempted to confer with the person or party failing to make disclosure
25 or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1).
26 The latter provides:
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1 (1) *Meet and Confer Requirement.* Any motion for an order
2 compelling disclosure or discovery must include a certification,
3 in the motion or in a declaration or affidavit, that the movant
4 has in good faith conferred or attempted to confer with the
5 person or party failing to make disclosure or discovery in an
6 effort to resolve the dispute without court action. The
7 certification must list the date, manner, and participants to the
8 conference. If the movant fails to include such a certification,
the court may deny the motion without addressing the merits of
the dispute. A good faith effort to confer with a party or person
not making a disclosure or discovery requires a face-to-face
meeting or a telephone conference.

9 W.D. Wash. Local Civ. R. 37(a)(1). As noted by both Defendant and Plaintiff, the
10 parties engaged in two meet-and-confer conferences in October of 2017, and conferred
11 again in November of 2017. Defendant also represents that it attempted to discuss
12 outstanding discovery issues with Plaintiff on December 13, 2017, but did not receive a
13 response. Dkt. # 74. As of the date this Motion was filed, the parties had not had an in-
14 person conference regarding these discovery issues since October of 2017. Plaintiff did
15 not respond to Defendant's last request for a conference regarding Plaintiff's November,
16 2017 letter. Plaintiff filed this Motion on January 16, 2018. Dkt. # 71.

17 This Court's Standing Order states that counsel contemplating the filing of a
18 motion "shall first contact opposing counsel to discuss *thoroughly*, preferably in person,
19 the *substance* of the contemplated motion *and any potential resolution*." Dkt. # 41.
20 The Court and Federal and Local Rules have this requirement to minimize waste of
21 judicial time and resources on issues that could be resolved amongst the parties.
22 Defendant represents that the parties' discussions regarding the discovery requests at
23 issue were ongoing. Dkt. # 74. Defendant also represents that there are several
24 outstanding issues from these discussions, including, the time period encompassed by
25 Plaintiff's discovery requests, Plaintiff's request for the electronic files for 59 other
26 employees, and applicable search terms for responsive documents. Dkt. # 75. Other
27 than the November, 2017 exchange regarding only one of Plaintiff's requests for

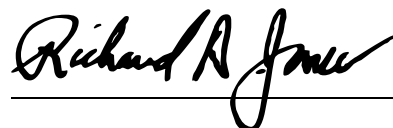
1 production, the parties failed to continue these discussions in the almost two months
2 before Plaintiff filed this Motion.

3 The record does not suggest that the parties reached an impasse before the filing
4 of this motion. The facts as presented by both parties indicate that there was no
5 conclusion to any of these open-ended discussions and that further consultation may
6 have resolved many of these discovery disputes prior to moving for this Court's
7 intervention. Further, the Court recently granted Plaintiff's unopposed motion to
8 continue the trial date in this matter for almost six months. Dkt. # 81. Plaintiff
9 contends that he is unable to provide meaningful expert reports without Defendant's
10 cooperation with discovery. As the deadline for expert witness disclosure and reports
11 was extended to September 12, 2018, this argument in favor of granting Plaintiff's
12 motion to compel is not persuasive. The parties now have ample time to continue their
13 discovery-related discussions. Therefore, Plaintiff's Motion to Compel is **DENIED** for
14 failure to comply with Rule 37(a)(1), LCR 37(a)(1) and this Court's Standing Order.
15 Dkt. # 71. The Court also notes that it will not, as Defendant requests, issue what
16 amounts to a presumptive ruling on Defendant's pending Motion to Dismiss by agreeing
17 to stay discovery on allegations related to that Motion. Dkt. # 74.

18 **III. CONCLUSION**

19 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Compel without
20 prejudice with leave to refile. Dkt. # 71.

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22 Dated this 27th of March, 2018.

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26 The Honorable Richard A. Jones
27 United States District Judge